

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SMITHKLINE BEECHAM CORPORATION, doing
business as GLAXOSMITHKLINE,

No. C 07-5702 CW

VERDICT FORM

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

I. ANTITRUST CLAIMS

MONOPOLIZATION CLAIM

A1. Do you find that GSK has proven a validly defined economic market?

Yes ____ ("Yes" is a finding for GSK.)

No ____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question A2. If you answered "No" to this question, proceed to Question B1.

A2. Do you find that GSK has proved that Abbott had monopoly power in the relevant market?

Yes ____ ("Yes" is a finding for GSK.)

No ____ ("No" is a finding for Abbott.)

Whether you answered "Yes" or "No" to this question, answer Question A3.

A3. Do you find that GSK has proved that Abbott engaged in the following types of anticompetitive conduct:

a. a practical refusal to deal with its competitors?

Yes ____ ("Yes" is a finding for GSK.)

No ____ ("No" is a finding for Abbott.)

b. unlawful bundled discounting?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to Question A3a or A3b or both, proceed to Question A4. Otherwise, proceed to Question B1.

A4. Do you find that Abbott has proved that it had a legitimate business reason for its conduct?

Yes _____ ("Yes" is a finding for Abbott.)

No _____ ("No" is a finding for GSK.)

If you answered "Yes" to this question, proceed to Question B1. If you answered "No" to this question, proceed to Question A5.

A5. Do you find that GSK suffered injury to its business or property as a result of Abbott's monopolization of the relevant market, that this monopolization was a material cause of GSK's injury and that the injury was of the type that the antitrust laws were intended to prevent?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

Proceed to Question A6.

ATTEMPTED MONOPOLIZATION CLAIM

A6. Did you find in Question A1 above that GSK has proven a validly defined economic market?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question A7. If you answered "No" to this question, proceed to Question B1.

A7. Do you find that Abbott had a specific intent to acquire monopoly power in the relevant market?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question

1 A8. If you answered "No" to this question, proceed to
2 Question A12.

3 A8. Do you find that there was a dangerous probability that Abbott
4 would acquire monopoly power in the relevant market?

5 Yes _____ ("Yes" is a finding for GSK.)

6 No _____ ("No" is a finding for Abbott.)

7 If you answered "Yes" to this question, then answer Question
8 A9. If you answered "No" to this question, proceed to
9 Question A12.

10 A9. Did you find in Question A3 above that GSK has proved that
11 Abbott engaged in the following types of anticompetitive
12 conduct:

13 a. a practical refusal to deal with its competitors?

14 Yes _____ ("Yes" is a finding for GSK.)

15 No _____ ("No" is a finding for Abbott.)

16 b. unlawful bundled discounting?

17 Yes _____ ("Yes" is a finding for GSK.)

18 No _____ ("No" is a finding for Abbott.)

19 If you answered "Yes" to Question A9a or A9b or both, proceed
20 to Question A10. Otherwise, proceed to Question B1.

21 A10. Did you find in Question A4 above that Abbott has proved that
22 it had a legitimate business reason for its conduct?

23 Yes _____ ("Yes" is a finding for Abbott.)

24 No _____ ("No" is a finding for GSK.)

25 If you answered "Yes" to this question, then proceed to
26 Question B1. If you answered "No" to this question, proceed
27 to Question A11.

28 A11. Do you find that GSK suffered injury to its business or
property as a result of Abbott's attempted monopolization of
the relevant market, that this attempted monopolization was a
material cause of GSK's injury and that the injury was of the
type that the antitrust laws were intended to prevent?

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

1 Proceed to Question A12.

2 A12. If you answered "Yes" to Question A5 or A11 or both, what
3 amount of damages, if any, do you find GSK has proved it
4 suffered in lost profits from the misconduct you found Abbott
5 to have committed?

6 \$ _____

7 Proceed to Question B1.

8 **II. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
9 **CLAIM**

10 B1. Do you find that Abbott breached the implied covenant of good
11 faith and fair dealing that is implied in the Norvir Boosting
12 License?

13 Yes _____ ("Yes" is a finding for GSK.)

14 No _____ ("No" is a finding for Abbott.)

15 If you answered "Yes" to this question, then answer Question
16 B2. If you answered "No" to this question, proceed to
17 Question C1.

18 B2. Did Abbott engage in grossly negligent conduct when it
19 breached the implied covenant of good faith and fair dealing?

20 Yes _____ ("Yes" is a finding for GSK.)

21 No _____ ("No" is a finding for Abbott.)

22 If you answered "Yes" to this question, then answer Question
23 B3. If you answered "No" to this question, proceed to
24 Question C1.

25 B3. Do you find that Abbott's breach of the implied covenant of
26 good faith and fair dealing was a proximate cause of the
27 injury to GSK's business?

28 Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question
B4. If you answered "No" to this question, proceed to
Question C1.

B4. If you answered "Yes" to Question B3, what amount of damages,
if any, do you find GSK has proved it suffered in lost profits
from Abbott's breach of the implied covenant of good faith and

fair dealing? Enter the number below, even if you awarded some or all of these damages in Question A12 above. (The Court will ensure that GSK is not awarded the same damages more than once.)

\$ _____

If you entered a number in this line, answer Question B5. Otherwise, proceed to Question C1.

B5. How much of the damages you found in Question B4, if any, were NOT awarded in Question A12 above?

\$ _____

Proceed to Question C1.

ADDITIONAL QUESTIONS

C1. Did Abbott engage in any of the following?

a. During the negotiation of the Norvir Boosting License, Abbott was considering how to use its control over Norvir to limit competition with Kaletra and deliberately withheld this from GSK.

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

b. Abbott inequitably asserted its power over Norvir by increasing Norvir's price by 400 percent to undermine and disrupt Lexiva's launch and future sales.

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

c. Abbott manipulated the timing of the 400-percent Norvir price increase in order to disrupt Lexiva's launch and undermine Lexiva's future sales.

Yes _____ ("Yes" is a finding for GSK.)

No _____ ("No" is a finding for Abbott.)

If you answered "Yes" to Question C1a, b, or c, or more than one of them, then answer Question C2. If you answered "No" to Questions C1a, b, and c, please have your presiding juror sign, date and return your verdict.

1 C2. Do you find that the conduct you found in Question C1 that
2 Abbott engaged in was a proximate cause of injury to GSK?

3 Yes _____ ("Yes" is a finding for GSK.)

4 No _____ ("No" is a finding for Abbott.)

5 If you answered "Yes" to this question, then answer Question
6 C3. If you answered "No" to this question, please have your
presiding juror sign, date and return your verdict.

7 C3. If you answered "Yes" to Question C2, what amount of damages,
8 if any, do you find GSK has proved it suffered in lost profits
9 from the conduct you found in Question C1? Enter the number
10 below, even if some or all of these damages are the same
damages that you awarded in Question A12 or B5 above. (The
Court will ensure that GSK is not awarded the same damages
more than once.)

11 \$ _____

12 If you entered a number in this line, answer Question C4.
13 Otherwise, please have your presiding juror sign, date and
return your verdict.

14 C4. How much of the damages you found in Question C3, if any, were
15 NOT awarded in Question A12 or B5 above?

16 \$ _____

17 Please have the presiding juror sign, date and return this form.

18 Signed: _____ Date: _____
19 Presiding Juror